

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

<b>United States District Court</b>	District Western of Missouri
Name (under which you were convicted): <b>Michael Dale</b>	Docket or Case No.: <b>06-00074-01-CRWDW</b>
Place of Confinement: <b>U.S.P. Big Sandy</b>	Prisoner No.: <b>18073-045</b>
<div style="display: flex; justify-content: space-between;"> <span>UNITED STATES OF AMERICA</span> <span>Movant (include name under which convicted)</span> </div> <div style="text-align: center; margin-top: 5px;">v. <b>Michael Dale</b></div>	

**MOTION**

1. (a) Name and location of court that entered the judgment of conviction you are challenging: \_\_\_\_\_  
United States District Court For The Western District of Missouri Western Division  
 (b) Criminal docket or case number (if you know): 06-00074-01-CR-W-DW
2. (a) Date of the judgment of conviction (if you know): January 7, 2008.  
 (b) Date of sentencing: September 9, 2008.
3. Length of sentence: Life.
4. Nature of crime (all counts): Conspiracy to Distribute more than 5 Kilo-  
grams of Cocaine and more than 50 grams of Cocaine Base.  
Aiding and Abetting in the carrying of a Firearm in rela-  
tion to a Drug Trafficking Crime and the Commission of  
Murder Aiding and Abetting in the carrying of a Firearm in  
relation to a Drug Trafficking Crime and the Commission of  
Murder.
5. (a) What was your plea? (Check one) Murder.  
 (1) Not guilty ☒      (2) Guilty ☐      (3) Nolo contendere (no contest) ☐  
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
6. If you went to trial, what kind of trial did you have? (Check one)      Jury ☒      Judge only ☐
7. Did you testify at a pretrial hearing, trial, or post-trial hearing?      Yes ☐      No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒

No ☐

9. If you did appeal, answer the following:

(a) Name of court: United States Appeals Court For the Eighth Circuit.

(b) Docket or case number (if you know): 08-3172

(c) Result: Denied

(d) Date of result (if you know): \_\_\_\_\_

(e) Citation to the case (if you know): \_\_\_\_\_

(f) Grounds raised: \_\_\_\_\_

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☒ No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): 08-3172

(2) Result: July 30, 2010 Affirmed

(3) Date of result (if you know): 7/30/2010

(4) Citation to the case (if you know): N/A

(5) Grounds raised: The trial court erred in admitting into evidence a statement of the defendant tape-recording by another inmate while both were in federal custody, in that the statement was obtained in violation of the lower court's detention order and was obtained through the deliberate falsification of court records, which constitutes violations of the due process clause of the Fifth Amendment.

[See  
attached  
page-2-].

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

**ATTACHED PAGE -2-**

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The trial court erred in denying the motion to sever parties and by admitting the testimony of Bryant Burton in a redacted format, in that the redacted format of this testimony did not resolve to the jury that the defendant was the party implicated in the non-testifying co-defendant's statement, in violation of the Sixth Amendment rights to confrontation.

The trial court erred in overruling testimony and evidence regarding gangs, all in violation of the Fifth Amendment to the United States Constitution.

The trial court erred in failing to dismiss juror Messner on the second day of trial and again at the end of the evidence, and that the juror reported on the second day of trial that he did not believe he could be impartial, but was kept on the jury and was not replaced at the end of trial, all in violation of the Sixth Amendment rights to trial by a fair and impartial fact finder.

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: See Memorandum of Law, in support on 28 U.S.C. §2255

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND TWO:** See Memorandum of Law, in support of 28 U.S.C. §2255

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: First appeal pursuant to 28 U.S.C. §2255

**GROUND THREE:** See Memorandum of Law in support of 28 U.S.C. §2255

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

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(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_



Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND FOUR:** See Memorandum of Law in support of 28 U.S.C. §2255

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: First appeal pursuant to 28 U.S.C. §2255

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: \_\_\_\_\_

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. Circuit Court of Jackson County, 415 East 12th St. Kansas City, Missouri 64106. Case No. 1216-CV02475.

Motion for dismissal of Interstate Agreement Act on Detainer based upon the fact the State of Missouri violated the 180 days agreement to prosecute the alleged criminal complaint.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: \_\_\_\_\_

(b) At arraignment and plea: \_\_\_\_\_

(c) At trial: \_\_\_\_\_

(d) At sentencing: \_\_\_\_\_

(e) On appeal: \_\_\_\_\_

(f) In any post-conviction proceeding: \_\_\_\_\_

(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☒ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

Petitioner Dale is filing his 28 U.S.C. §2255 within the  
statute of limitation under the Anti-Terrorism and effect-  
ive Death Penalty Act of 1996, (AEDPA).

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

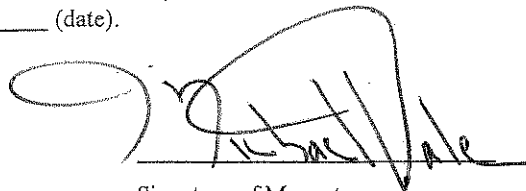
Therefore, movant asks that the Court grant the following relief: Order a new evidentiary hearing based upon the merits of petitioner's claims before the court, which would enable petitioner Dale to further  
or any other relief to which movant may be entitled. argues his case before the court.

Pro-Se litigate.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on 30th  
March 2012 (month, date, year).

Executed (signed) on 3/30/2012 (date).



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. \_\_\_\_\_

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KANSAS CITY, MO

Mr. Michael Dale #18073-045  
P.O. Box 2068  
Inez, KY. 41224

CLERK'S OFFICE OF U.S. DISTRICT  
COURT  
400 East Ninth Street  
Kansas City, Missouri 64106

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